

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MALISA BACCAM
Claimant

UNITED HEALTHCARE SERVICES INC
Employer

APPEAL 16A-UI-05508-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/24/16
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the May 13, 2016 (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was discharged for violation of a known company rule. The parties were properly notified of the hearing. A telephone hearing was held on June 1, 2016. The claimant, Malisa Baccam, participated. The employer, United Healthcare Services, Inc., participated through Linda Dickens, provider service supervisor, and Thomas Kuiper of Equifax/Talx represented the employer. Employer's Exhibits A, B, and C were received and admitted into the record without objection.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a resolution specialist from September 18, 2006 until this employment ended on April 27, 2016, when she was discharged for call avoidance.

During live call observation on April 25, 2016, the business manager found claimant was releasing calls that were coming into her line instead of handling them. When the business manager asked claimant if she was having any technical difficulties with her calls that day, claimant said everything was fine. (Employer's Exhibit B.) The business manager then brought the issue to Dickens and another supervisor. They ran trace reports of claimant's calls and found that she released or avoided 19 calls on April 18, 2016. (Employer's Exhibit C.) The employer pulled claimant into a meeting and advised her about what the business manager observed and what the trace reports showed. Claimant denied intentionally releasing any calls. Following this meeting, the employer contacted its human resources department; who determined discharge was appropriate.

The employer's call avoidance policy specifically prohibits an employee from improperly disconnecting or releasing a telephone call prior to completing the call. (Employer's Exhibit A.) Claimant had been advised of this policy during her employment. Claimant had never been warned for violating this policy during her employment, and she was not aware her job was in jeopardy at the time she was discharged.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason. Benefits are allowed.

Iowa Code § 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation.

A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Training or general notice to staff about a policy is not considered a disciplinary warning. Here, claimant had never previously been disciplined for call avoidance during her ten years of employment. Claimant denies intentionally releasing any calls. The conduct for which claimant was discharged was, at most, merely an isolated incident of poor judgment. As the employer had not previously warned claimant about the issue leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. Benefits are allowed.

DECISION:

The May 13, 2016 (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

Elizabeth Johnson
Administrative Law Judge

Decision Dated and Mailed

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